

247625

July 3, 2003

U.S. Department of Transportation  
Docket Management Facility  
Room PL -401  
400 Seventh St., SW  
Washington, DC 20590-0001

DEPT. OF TRANSPORTATION  
DOCKETS

2003 JUL -7 A 9:18

**Subject: DOT Docket No. FMCSA-2001-11117-37  
UNITING AND STRENGTHENING AMERICA BY  
PROVIDING APPROPRIATE TOOLS REQUIRED TO  
INTERCEPT AND OBSTRUCT TERRORISM (USA Patriot  
Act)**

C R England, Inc is a for hire, irregular route, truckload carrier specializing in the transportation of temperature controlled products. The majority of C R England's 2500 tractors and 4000 trailers are involved in the transportation of food products. However, many food product ingredients in concentrated form require hazardous placards. Manufacturers and food processors which ship and receive hazardous materials in combination with non-hazardous products, require carriers to transport all their freight, including the hazardous, in order to continue doing business with them. Often, hazardous materials represent only a small portion of a carriers total freight mix, but to accommodate the customers who ship hazardous goods, all drivers must be qualified to transport a placarded load. Therefore we, and many other truckload carriers, require all drivers to have a hazardous materials endorsement.

C R England wants to be a good citizen in counteracting terrorism. Controlling the transportation of dangerous products that could be used for insidious purposes is a goal we all share. However, there are certain aspects in the administrative portion of the act that place unreasonable burdens on drivers and carriers.

Much of the freight requiring placarding is harmless except to the individual handling the product. These goods pose no legitimate threat for mass destruction or large-scale harm. Coca Cola syrup, certain food flavorings and batteries are a few examples of the kinds of products requiring a hazardous endorsement, yet they pose little genuine threat. The drivers handling these products, under the Patriot Act, must meet the same security standards as a driver pulling a tanker of gasoline.

**Recommendation:** Create a graduated hazardous materials endorsement for differing levels of risk. Using two or three tiers, such as those used in the hazmat tables one and two, products could be categorized into groups. Endorsements for only the more severe categories, with credible terrorist risk, would require drivers to undergo the background checks. Other categories would only require the hazardous materials training as exists currently for protection for those actually handling the product. This would substantially reduce the number of background checks needed. It would also limit the required resources for background checks and make it possible to complete those searches in a reasonable time frame.

The truckload segment of the trucking industry struggles with high turnover and serious driver shortages. C R England invests an inordinate amount of resources in our efforts to hire and retain good drivers. We foresee the proposed administration of the Patriot Act becoming a deterrent, discouraging drivers from submitting applications to drive for carriers requiring a hazardous materials endorsement. Carriers such as C R England will be at a disadvantage in recruiting new drivers.

Under the Patriot Act, drivers will be required to provide fingerprints, which are taken at a location designated by the state issuing the CDL endorsement. The locations for generating the fingerprints will be a contract arrangement, such as a law enforcement office, located in a different facility than the state agency issuing the CDL. This will place an additional burden on the driver to obtain the certified identification fingerprints at one location, and then submit the fingerprints and application at a different location to a state CDL facility. If all paperwork is in order, the driver will be eligible to take the written test and begin the wait for the background check results. Why would a driver want to go through the additional effort required for a hazardous endorsement, when it is much simpler to avoid all the hassle by working for a non-hazardous transporter?

**Recommendation:** Require that State agencies conduct all phases of the renewal process in one location. Fingerprints, application submissions and testing should all be a one-stop effort for the driver.

The estimated cost for obtaining a hazardous materials endorsement is \$50-\$100. With fingerprinting, security clearance, and additional DMV notifications to drivers needing to renew their endorsement, the cost will most likely exceed the \$100 estimate. Drivers coming out of schools cannot afford to pay this and the burden will fall to the carriers. Most truckload carriers have over 100% driver turnover due to the nature of truckload business. With the driver shortage, 70% of drivers hired by C R England are trainees, who are new to the industry, lacking a hazardous endorsement. With 3500 new drivers at a cost of \$100 each, the additional cost to us would be a conservative \$350,000 per year. If drivers are required to pay this additional cost, most will chose to work for carriers not requiring the endorsement. Carriers are already burdened with the expense of security site evaluations and costly enhancements, written plans and additional training requirements.

**Recommendation:** Funds earmarked in the Patriot Act should be used to pay for the expense related to the background checks. The purpose of the Act is to protect the nation, not the trucking industry. The nation, not the industry should fund the additional expense.

The estimated 90 to 120 days for obtaining the security clearance is unreasonable. It is burdensome on both carriers and drivers. Remedying this delay could make the Act's implementation feasible. New drivers entering the industry will be unable to work for a carrier requiring hazardous endorsements. The impact of waiting for several weeks due to the long processing time is beyond reason. A driver supporting a family cannot be

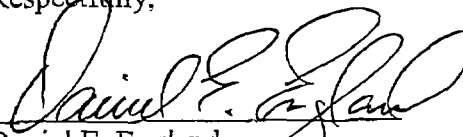
expected to attend school, then wait for weeks or months before earning money to support their family. Carriers cannot afford to have equipment sit idle while waiting for security clearance.


**Recommendations:** Raise the priority and utilize the necessary resources needed to complete the background check in a more reasonable time frame. If there truly is a national security risk, and we believe there is, the background checks should have enough priority to justify additional resources to reduce the waiting period. The background checks must be accomplished in a matter of a few days (as in the airline industry or in the banking industry) rather than the months proposed for the trucking industry. All the hardship should not be placed on the already struggling trucking industry.

First time applicants should be given priority for conducting the background check. If the delays in completing and processing the background check cannot be eliminated the new driver should be given preference. Otherwise they will be unable to work until the clearing process is completed. The burden to the driver, their family, the carrier and the nations economy could be reduced or eliminated if the background check is performed in a reasonable period of time. Drivers with existing endorsements have the opportunity to apply well in advance for renewal, yet continue to work. New drivers do not have that opportunity.

C R England appreciates the opportunity to provide comments regarding this proposed final rule. We sincerely hope these comments will be given consideration as the Patriot Act is implemented.

Respectfully,

  
Daniel E. England  
Chief Executive Officer

  
Gordon Lambert  
V.P. Safety